IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.173 OF 2005

M/s.Solanki Jewellers .. .. ..Appellant
Versus
Maharashtra State Electricity
Board and 2 Ors. .. ..Respondents

Mr.N.B.Shah with Piyush Shah for appellant
Ms A.R.S.Baxi for respndent Nos.1 to 3.

CORAM : P.V.KAKADE, J.

DATE : 26TH SEPTEMBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Pune dated 22.3.2004 allowing the appeal and set aside the judgment and order passed by Joint Civil Judge, Senior Division, Pune dated 17.2.2003 decreeing the plaintiff’s suit.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff came with the case that he is consumer of defendant - Electricity Board. Since the month of August 1998, the meter of the plaintiff found

to be faulted and therefore, the plaintiff informed this fact to the defendant by two letters dated 6.8.1998 and 29.8.1998 however, no action was taken. In fact the the defendant asked the plaintiff to pay the amount of Rs.1000/= for checking the meter. The plaintiff paid the bills issued by the defendant from time to time. On 20.8.1998 the plaintiff purchased two Air Conditioners and installed the same in the shop. On 16.10.1998 the officers of vigilance branch of the defendant checked the meter of the plaintiff and during which time the meter was allegedly found tampered with. On or about 28.10.1998 the plaintiff address a letter to the defendant that the seals of the meter was tampered with and therefore actual consumption was much more. They also issued supplementary bill and called upon the plaintiff to pay the same or otherwise the supply would be discharged. The supplementary bill of Rs.1,19,018.40 ps. and other dues, the defendant took a cheque of Rs.3000/=. The plaintiff filed the suit against the defendants for the reliefs of declaration and consequent perpetual injunction. The defendants contested the suit, inter alia, denying all the allegations with submission that the plaintiff had tampered the meter and his actual consumption was much more after installation

of two A/C and therefore supplementary bill was issued and hence suit was sought to be dismissed on such and other grounds.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the supplementary bill was illegal and as such the defendant was not entitled to recover the amount under such supplementary bill. It was further held that the defendants failed to prove that the plaintiff had tampered with the meters and as such the suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the sides on the basis of available evidence found fault with the reasoning adopted by the trial court holding that the plaintiff had failed to prove his case and as such the appeal came to be allowed. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise the issue to the effect that the reasoning adopted by the lower appellate court while

appreciating the documents at Exhs.47 and 48 appears to be perverse and therefore, interference of this court was necessitated. These two documents i.e. letters dated 6.8.1998 and 29.8.1998 respectively, are seen to be addressed by the plaintiff to the defendants. The whole contention between the parties is regarding the receipt of the letters. The plaintiff has come with the case that the documents in questions were received by the defendants and reference to those letters is made in the document Exh.50. However, it is to be noted that Exh.50 is an application made by the plaintiff himself wherein reference of these two letters were found. However, the defendants denied the receipt of the said letters and there is absolutely no evidence to satisfactorily show that these letters were actually sent by the plaintiff and were received by the defendants. The learned appellate court judge has, in my considered view, properly appreciated the entire evidence in this regard, and therefore, it would brook no interference. It is also to be noted that the evidence with regard to the tampering of the electric meter, consequent upon installation of two Air Conditioners, by the plaintiff is seen to be sufficiently brought on record on behalf of the

defendants and it is also seen that after vigilance branch of the defendants found that the tampering with the meter, the plaintiff has issued cheque of Rs.30,000/= towards the demand made by the defendants. Be as it may, the fact remains that there is absolutely no substantial question of law involved in this appeal and the appellate court has appreciated the entire evidence in proper perspective. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in Second Appeal. Adopting any other approach is not permissible.

5. Under the circumstances, I do not see any reason why the lower appellate court judgement should be interfered with and as such the appeal stands dismissed with no order as to costs.